

and after notice and comment and opportunity for a public hearing in the State, waive in whole or part the requirements of the Schools Rule, if the State has established and is implementing or intends to implement an ongoing program of asbestos inspection and management which is at least as stringent as the requirements of the rule. Section 763.98 (40 CFR 763.98) sets forth the procedures to implement this statutory provision. The Schools Rule requires that specific information be included in the waiver request submitted to EPA, establishes a process for reviewing waiver requests, and sets forth procedures for oversight and rescission of waivers granted to States. The Agency encourages States to establish and manage their own school regulatory programs under the AHERA waiver provision. EPA issued a notice in the Federal Register of March 5, 1996, (61 FR 8619; FRL-4985-9) which announced the receipt of a waiver request from the State of Maine, and solicited comments from the public. The notice also discussed the program elements of the State program, listed differences between the State program and the AHERA requirements, and provided EPA's preliminary response to the State on the differences identified.

No comments were received during the 60-day comment period. No request for a public hearing was received. Consequently, no hearing was held.

EPA is required to issue a notice in the Federal Register announcing its decision to grant or deny a request for waiver within 30 days after the close of the comment period. The comment period for this docket closed May 6, 1996. The 60-day review period may be extended if mutually agreed upon by EPA and the State.

The remainder of this document is divided into two units. The first unit discusses the Maine program and sets forth the reasons and rationale for EPA's decision on the State's waiver request. This unit is sub-divided into two sections. Section A discusses key elements of the State's program at the time the waiver request was submitted. Section B gives EPA's final approval of the waiver request based on the State's response. The second unit of this notice discusses statutory requirements of the Paperwork Reduction Act.

II. The Maine Program

A. Program Elements

Maine Revised Statutes 38 M.R.S.A. The Maine Department of Environmental Protection (MDEP) has the authority to regulate asbestos in schools and State buildings. The Maine

Administrative Code, Title 16B, Chapter 12A and Appendix A are the State provisions for asbestos inspections and management in school and public and commercial buildings.

The MDEP conducts inspections to ensure compliance with the above laws and rules. MDEP reviews the management plans submitted for schools. The requirements of the Maine Program are the same or more stringent than the Federal AHERA requirements. The State requirements are more stringent in that the requirements apply to public and commercial buildings in addition to schools.

B. EPA's Decision on Maine's Request for Waiver

Based on a formal assurance to EPA from the lead Maine agency (MDEP) having the legal authority to carry out the requirements relating to the waiver request that Maine has incorporated into its asbestos inspection and management program, an asbestos accreditation program at least as stringent as the EPA MAP, Interim Final Rule is approved by this Notice.

Accordingly, EPA grants the State of Maine a waiver from the requirements of 40 CFR part 763, subpart E, effective November 7, 1996. Federal jurisdiction shall be in effect in the period between the date of publication of this document and that date. This will assure that the State has sufficient time to prepare to assume its new responsibilities. It will also assure the public that no gap in authority occurs, and gives the public sufficient notice of the transfer of duties from EPA to the State of Maine. This waiver is applicable to all schools covered by AHERA in the State. This waiver is subject to rescission under 40 CFR 763.98(j) based on periodic EPA oversight evaluation and conference with the State in accordance with 40 CFR 763.98(h) and 763.98(i).

III. Other Statutory Requirements

Paperwork Reduction Act

The reporting and recordkeeping provisions relating to State waivers from the requirements of the Asbestos-Containing Materials in Schools Rule (40 CFR part 763) have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act and have been assigned OMB control number 2070 0091.

List of Subjects in 40 CFR Part 763

Environmental protection, Administrative practice and procedure, Asbestos, Confidential business information, Hazardous substances, Imports, Intergovernmental relations,

Labeling, Reporting and recordkeeping requirements, Schools.

Dated: September 23, 1996.

John P. DeVillars,

Regional Administrator, Region 1.

[FR Doc. 96-25798 Filed 10-07-96; 8:45 am]

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FEDERAL MARITIME COMMISSION

46 CFR Part 506

[Docket No. 96-17]

Inflation Adjustment of Civil Monetary Penalties

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: This final rule implements the Federal Civil Penalties Inflation Adjustment Act of 1990 as amended by the Debt Collection Improvement Act of 1996. The rule adjusts the amount of each statutory civil penalty subject to Federal Maritime Commission jurisdiction in accordance with the requirements of the Act.

EFFECTIVE DATE: November 7, 1996.

FOR FURTHER INFORMATION CONTACT:

Vern W. Hill, Director, Bureau of Enforcement, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573, (202) 523-5783.

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation Adjustment Act of 1990 ("1990 Act"), Public Law 101-410, 104 Stat. 890, 28 U.S.C. 2461 note, as amended by the Debt Collection Improvement Act of 1996 ("Act"), Public Law 104-134, April 26, 1996, requires the inflation adjustment of Civil Monetary Penalties ("CMP") to ensure that they continue to maintain their deterrent value. The Act requires that not later than 180 days after its enactment, October 23, 1996, and at least once every 4 years thereafter, the head of each agency shall, by regulation published in the Federal Register, adjust each CMP within its jurisdiction by the inflation adjustment described in the 1990 Act. The inflation adjustment under the Act is to be determined by increasing the maximum CMP by the cost-of-living adjustment, rounded off as set forth in section 5(a) of the 1990 Act. The cost-of-living adjustment is the percentage (if any) for each CMP by which the Consumer Price Index ("CPI")¹ for the month of June of the calendar year preceding the adjustment, exceeds the CPI for the

¹ CPI is defined as the CPI for all urban consumers published annually by the Department of Labor.

month of June of the calendar year in which the amount of such CMP was last set or adjusted pursuant to law. The first adjustment to a CMP may not exceed 10 percent of such penalty.

Any increased penalties shall apply only to violations which occur after the date on which the increase takes effect.

A typical example of an inflation adjustment of a CMP is as follows:

Section 13 of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1712, imposes a maximum \$25,000 penalty for a knowing and willful violation of the 1984 Act. The penalty was set in 1984. The CPI for June, 1984 was 310.7. The CPI for June, 1996 is 469.5. The inflation factor, therefore, is $469.5/310.7$ or 1.51. The maximum penalty amount after increase and statutory rounding would be \$40,000. ($1.51 \times 25,000$) The new maximum penalty amount after applying the 10% limit on an initial increase is \$27,500.

A similar calculation was done with respect to each CMP subject to the jurisdiction of the Federal Maritime Commission ("Commission"). In compliance with the Act, the Commission is hereby amending its regulations by creating a new part 506 in 46 CFR which will be entitled Civil Monetary Penalty Inflation Adjustment.

Notice and an opportunity for public comment are not necessary prior to issuance of this final rule because it implements a definitive statutory formula mandated by the Act.

The Commission certifies pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units, and small governmental jurisdictions because it merely increases the maximum statutory civil monetary penalty by 10 percent for those entities that commit violations after the effective date of this rule. The Commission rarely has imposed the statutory maximum civil monetary penalty and, moreover, considers ability of a respondent to pay a civil monetary penalty in determining its amount. The size of a company necessarily enters into a determination of its ability to pay.

The rule does not contain any collection of information requirements

as defined by the Paperwork Reduction Act of 1995, as amended. Therefore, Office of Management and Budget review is not required.

List of Subjects in 46 CFR Part 506

Administrative practice and procedure, Penalties.

Part 506 of title 46 of the Code of Federal Regulations is added to read as follows:

PART 506—CIVIL MONETARY PENALTY INFLATION ADJUSTMENT

Sec.

506.1 Scope and purpose.

506.2 Definitions.

506.3 Civil Monetary Penalty Inflation Adjustment.

506.4 Cost of Living Adjustments of Civil Monetary Penalties.

506.5 Application of Increase to Violations.

Authority: 28 U.S.C. 2461.

§ 506.1 Scope and purpose.

The purpose of this Part is to establish a mechanism for the regular adjustment for inflation of civil monetary penalties and to adjust such penalties in conformity with the Federal Civil Penalties Inflation Adjustment Act of 1990, 46 U.S.C. 2461, as amended by the Debt Collection Improvement Act of 1996, Public Law 104-134, April 26, 1996, in order to maintain the deterrent effect of civil monetary penalties and to promote compliance with the law.

§ 506.2 Definitions.

(a) *Commission* means the Federal Maritime Commission.

(b) *Civil Monetary Penalty* means any penalty, fine, or other sanction that:

(1)(i) Is for a specific monetary amount as provided by Federal law; or
(ii) Has a maximum amount provided by Federal law;

(2) Is assessed or enforced by the Commission pursuant to Federal law; and

(3) Is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal Courts.

(c) *Consumer Price Index* means the Consumer Price Index for all urban consumers published by the Department of Labor.

§ 506.3 Civil Monetary Penalty Inflation Adjustment.

The Commission shall, not later than October 23, 1996, and at least once every 4 years thereafter—

(a) By regulation adjust each civil monetary penalty provided by law within the jurisdiction of the Commission by the inflation adjustment described in § 506.4; and

(b) Publish each such regulation in the Federal Register.

§ 506.4 Cost of Living Adjustments of Civil Monetary Penalties.

(a) The inflation adjustment under § 506.3 shall be determined by increasing the maximum civil monetary penalty for each civil monetary penalty by the cost-of-living adjustment. Any increase determined under this subsection shall be rounded to the nearest:

(1) Multiple of \$10 in the case of penalties less than or equal to \$100;
(2) Multiple of \$100 in the case of penalties greater than \$100 but less than or equal to \$1,000;

(3) Multiple of \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000;

(4) Multiple of \$5,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000;

(5) Multiple of \$10,000 in the case of penalties greater than \$100,000 but less than or equal to \$200,000; and

(6) Multiple of \$25,000 in the case of penalties greater than \$200,000.

(b) For purposes of paragraph (a) of this section, the term "cost-of-living adjustment" means the percentage (if any) for each civil monetary penalty by which the Consumer Price Index for the month of June of the calendar year preceding the adjustment, exceeds the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.

(c) *Limitation on initial adjustment.* The first adjustment of civil monetary penalty pursuant to § 506.3 may not exceed 10 percent of such penalty.

(d) *Inflation adjustment.* Maximum Civil Monetary Penalties within the jurisdiction of the Federal Maritime Commission are adjusted for inflation as follows:

United States Code Citation	Civil Monetary Penalty description	Maximum penalty amount as of 10/23/96	New adjusted maximum penalty amount
46 U.S.C. app. sec. 817d	Failure to establish financial responsibility for death or injury.	5,000 200	5,500 220
46 U.S.C. app. sec. 817e	Failure to establish financial responsibility for non-performance of transportation.	5,000 200	5,500 220

United States Code Citation	Civil Monetary Penalty description	Maximum penalty amount as of 10/23/96	New adjusted maximum penalty amount
46 U.S.C. app. sec. 876	Failure to provide required reports, etc.—Merchant Marine Act of 1920.	5,000	5,500
46 U.S.C. app. sec. 876	Adverse shipping conditions/Merchant Marine Act of 1920.	1,000,000	1,100,000
46 U.S.C. app. sec. 876	Operating after tariff suspension/Merchant Marine Act of 1920.	50,000	55,000
46 U.S.C. app. sec. 1707a	Failure to pay ATFI Fee	5,000	5,500
46 U.S.C. app. sec. 1710a	Adverse impact on U.S. carriers by foreign shipping practices.	1,000,000	1,100,000
46 U.S.C. app. sec. 1712	Operating in foreign commerce after tariff suspension	50,000	55,000
46 U.S.C. app. sec. 1712	Knowing and willful violation/Shipping Act of 1984 or Commission regulation or order.	25,000	27,500
46 U.S.C. app. sec. 1712	Violation of Shipping Act of 1984, Commission regulation or order, not knowing and willful.	5,000	5,500
46 U.S.C. app. sec. 1714	Failure to file anti-rebate certification/Shipping Act of 1984.	5,000	5,500
31 U.S.C. sec. 3802(a)(1)	Program Fraud Civil Remedies Act/giving false statement.	5,000	5,500
31 U.S.C. sec. 3802(a)(2)	Program Fraud Civil Remedies Act/giving false statement.	5,000	5,500

§ 506.5 Application of Increase to Violations.

Any increase in a civil monetary penalty under this part shall apply only to violations which occur after the date the increase takes effect.

By the Commission.

Joseph C. Polking,
Secretary.

[FR Doc. 96-25561 Filed 10-7-96; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[CC Docket Nos. 96-98 and 95-185; FCC 96-394]

Implementation of the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Final rule; sua sponte reconsideration.

SUMMARY: The Federal Communications Commission here reconsiders on its own motion two specific issues addressed in its *First Report and Order* implementing the Telecommunications Act of 1996. First, the Commission establishes a default proxy range for line ports, and clarifies that the default proxy for unbundled local switching applies to the traffic-sensitive components of the local switching element, including the switching matrix, the functionalities used to provide vertical features, and the trunk port. Second, the Commission clarifies that interexchange carriers or competitive access providers may not

purchase access to an incumbent local exchange carrier's unbundled switch in order to provide interexchange traffic to customers for whom they do not provide local exchange service. The intended effect of this item is to provide an additional, interim proxy range for use by the states and to clarify one aspect of our rules governing the provision of unbundled network elements.

EFFECTIVE DATE: October 8, 1996.

FOR FURTHER INFORMATION CONTACT: Steve Weingarten, 202-418-1520 and Lisa Gelb, 202-418-1580.

SUPPLEMENTARY INFORMATION:

Adopted: September 27, 1996;
Released: September 27, 1996.

I. Summary

1. In *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 96-325 (released August 8, 1996), 61 FR 45476 (August 29, 1996) (*First Report and Order*), *petition for review pending sub nom., Iowa Utilities Board et al. v. FCC*, No. 96-3321 and consolidated cases (8th Cir. filed September 6, 1996), we adopted regulations implementing sections 251 and 252 of the Telecommunications Act of 1934, as amended by the Telecommunications Act of 1996, that require local exchange carriers (LECs) to open their networks to competition by providing interconnection, access to unbundled network elements, and retail services at wholesale rates. Pursuant to section 1.108 of the Commission's rules, 47 CFR § 1.108, we here reconsider on our own motion two specific issues addressed in the *First Report and Order*. We expect

that parties may raise other issues in petitions for reconsideration. First, we establish a flat-rated default proxy range for the non-traffic sensitive costs of basic residential and business line ports associated with the unbundled local switching element. The default proxy range for local switching adopted in the *First Report and Order* will continue to apply to the traffic-sensitive components of the local switching element, including the switching matrix, the functionalities used to provide vertical features, and the trunk port. Second, we clarify that, because the *First Report and Order* concluded that the local switching element includes dedicated facilities, the requesting carrier is thereby effectively precluded from using unbundled switching to substitute for switched access services where the loop is used to provide both exchange access to the requesting carrier and local service by the incumbent LEC. Finally, we make a non-substantive rule change to correct a typographical error.

II. Unbundled Local Switching Default Proxy

2. *Background.* To implement the pricing standards for interconnection and unbundled elements of the 1996 Act, we concluded in the *First Report and Order* that state commissions, in arbitrations, should set interconnection and unbundled element rates pursuant to a forward-looking economic cost pricing methodology. Specifically, we concluded that the prices that new entrants pay for interconnection and unbundled elements should be based on the incumbent LEC's Total Element Long Run Incremental Cost (TELRIC),